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Written statement* submitted by Human Rights Now, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Serious and Widespread Human Rights Violations Reported in Thailand's Poultry Sector

Human Rights Now (HRN), a Tokyo-based international human rights NGO, will soon release a report on labour rights violations in Thailand's poultry sector.[1] The report highlights serious labour and human rights violations across the sector, particularly among poultry export factories and farms supplying them. HRN is concerned about both the labour and human rights violations and the practice of employers using private criminal prosecutions to harass complaining workers and labour rights activists campaigning in this area.

HRN calls on Thai poultry farms, export factories, and foreign companies they supply to take measures to identify and end these violations, for the government of Thailand to adopt a National Action Plan on business and human rights (BHR) in accordance with the UN Guiding Principles on BHR Framework, and for the governments of states importing Thai poultry to take measures to facilitate the identification and end of these violations.

I. Labour Rights Violations in the Thai Poultry Sector

In 2016, the Thai government conducted an internal review of nationwide poultry farms and issued a report identifying widespread poor working and living conditions alongside implementing a Good Labour Practices programme to urgently improve working and living conditions in the poultry sector, after identifying several violations.

The Thai agriculture sector is notorious for rights abuses, particularly as it is a sector increasingly manned by vast numbers of migrant workers who do not speak the local language, are often exploited by brokers, and are vulnerable to debt bondage and employers confiscating their personal identification documents. Migrant workers often cannot understand their payslips so they do not know whether or how much they were underpaid, overworked, or what deductions were taken. Farms are also physically isolated, which (along with the language barrier) makes it difficult for migrant workers to seek help if their situation is exploitative. The 2004 avian flu virus[2] worsened the labour situation in the years that followed as the industry rapidly expanded production even as the number of farms fell. Thus, fewer workers handled more chickens and worked more hours without time off and without extra pay.

The ILO Committee of Experts has been critical of forced labour practices in Thailand,[3] and existing labour laws are not widely enforced. A 2015 ILO report found about 56% of Thailand's total workforce, 21.4 million workers, were part of an informal economy, generally meaning not formally registered or complying with labour regulations.[4] According to another ILO survey of Thai employers across sectors, about 47% of employers reported that they did not agree with the statement "migrants should have the same rights as Thai citizens."[5]

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1 HRN, "Labour Rights Violations in the Thai Poultry Industry Within the Supply Chains of Japanese Companies", forthcoming, http://hrn.or.jp/eng/news/2018/ ("HRN Report").

2 Anni McLeod, Nancy Morgan, Adam Prakash, & Jan Hinrichs, "Economic and Social Impacts of Avian Influenza", FAO, p.2, http://www.fao.org/avianflu/documents/Economic-and-social-impacts-of-avian-influenza-Geneva.pdf

3 ILO, 'Sixth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29) […]', 2017, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/ ---relconf/documents/meetingdocument/wcms_549113.pdf

4 Jack Huang, "The Overview of Informal Sector in Thailand", 27 Apr. 2017, Chinese Taipei Pacific Economic Cooperation Committee, http://ctpecctw.blogspot.jp/2017/04/the-overview-of-informal-sector-in.html, citing "ILO (n.d.). Social Protection for Thailand's Informal Economy Workers".

5 Elaine Pearson, "The Mekhong Challenge Underpaid, Overworked and Overlook The realities of young migrant workers in Thailand (Vol.1)", ILO, 2006, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_67_en.pdf, pp. 53-54, 57.

II. The Thammakaset Farm 2 Case

HRN's report highlighted a particular labour dispute beginning in 2016 involving 14 former migrant poultry workers of Thammakaset Farm who made claims of forced labour and other labour rights violations. Workers interviewed by HRN described conditions associated with forced labour on the farm, such as not having advance knowledge of illegal conditions and being unable to leave the farm, quit the job, or seek help from employers, authorities or outsiders because, for example, the employer confiscated their documents, threatened not to pay them after they requested to quit, and restricted their cellphone use and ability to talk to outsiders or workers on other farms.[6] Workers also reported being underpaid, working more than the legally allowable hours, and being denied overtime pay, breaks, holidays, and social security, all as required by Thailand's labour law.[7]

Based on these claims, the workers brought a lawsuit against the farm and Betagro, one multinational food processing and export company supplied by the farm. While the details of the case are complex, the workers still have not received any compensation for forced labour or the labour rights violations they have alleged, despite strong evidence for the claims as described in our report and a government order to the farm owner to immediately compensate the workers.

Aside from the labour rights litigation, the workers have also been subjected to harassment by the employer in retaliation for their complaints by private criminal claims, which Thai law permits, including a defamation claim for their complaint letter to the National Human Rights Commission of Thailand alleging forced labour and a theft claim against two workers and a labour activist for taking a time card to show to labour protection officials as evidence of overwork. The employer has also brought defamation and computer crimes charges against activist Andy Hall for his advocacy efforts on the workers' behalf.

On 16 November 2016, the mandates of the UN Working Group on Business and Human Rights and five UN Special Rapporteurs submitted a joint letter to the Thai government calling on it to take measures to respect the rights of the workers and Mr. Hall and prevent forced labour in the poultry industry.[8] On 17 May 2018, the Working Group and five UN Special Rapportuers specifically criticized the use of defamation laws to silence Andy Hall for his advocacy work related to the Thammakaset case.[9]

III. The Duties of Importing foreign States and Companies

Thai-produced poultry is exported globally, with Japan and Europe being the first and second largest importers, respectively, placing the workers in the supply chains of companies within the jurisdiction of these countries. In this regard, the UN Guiding Principles on Business and Human Rights state that governments have a duty to protect workers found throughout the operations of business within their jurisdiction from human rights abuses (Pr. 1 and 2), and companies have a duty to respect human rights and address impacts with which they are involved (Pr. 11), and to prevent or mitigate them even for impacts among their business relationships to which they do not directly contribute (Pr. 13(b)). Companies should publicly affirm a commitment to the Guiding Principles on BHR and implement strong due diligence measures to ensure that poultry workers in their supply chains have not been subjected to forced labour and other labour and human rights violations.

IV. Recommendations

HRN expresses concern at the situation of widespread and serious labour and human rights violations in the Thai poultry sector, particularly involving forced labour and other slavery-like practices.

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6 HRN Report, supra note 1, pp. 21-26.

7 *Id.*, pp. 26-29, 34.

8 "Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises", 16 Nov 2016, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=22831.

9 "Thailand: UN experts condemn use of defamation laws to silence human rights defender Andy Hall", 17 May 2018, https://www.protecting-defenders.org/en/news/thailand-un-experts-condemn-use-defamation-laws-silence-human-rights-defender-andy-hall

HRN calls on Thai poultry farms and companies to:

- Take immediate steps to comply with all national labour laws;
- Conduct regular training of supervisors and workers to ensure respect for labour and human rights.

HRN requests the government of Thailand to:

- Developing a National Action Plan on business and human rights;
- Prevent unjustified defamation and other claims that harass workers and rights activists;

HRN calls on foreign companies with Thai-produced poultry in their supply chains to:

- Publicly affirm a commitment to the UN Guiding Principles on Business and Human Rights;
- Implement strong due diligence measures to identify human rights impacts among Thai poultry suppliers, and take measures to address the impacts identified.

HRN requests governments importing Thai poultry to:

- If they have not already, adopt a National Action Plan on business and human rights; pass legislation to require transparency within supply chains and strict due diligence duties towards activities within them; and ban imports of products made through forced labour or other slavery-like conditions;
- Support rights activists working to ensure increased respect for human rights in the supply chains of companies within their jurisdiction.